

A) Remarks:

Once again the Examiner rejections claims 1 - 2, 5 - 6, 8, 10 - 11, 14 - 15 and 17 under 35 U.S.C. 102(b) as being anticipated by Beer et al. However, in this regard, the Examiner makes incorrect assumptions regarding the reference and therefore reconsideration is respectfully requested.

The incorrect observation regarding the reference is the statement that “the springs are capable of providing a continuous compressions as they are attached to the plates The device is capable of providing loading on graft material (12) disposed between the vertebral elements.”.

It is impossible for the device of Beer et al. to provide loading on graft material 12 disposed between the vertebral elements. The springs 13c - 13g are normally in compression and intended to continuously urge the plate elements 11a and 11b apart to provide a cushioning prosthesis.


The portion of the Beer et. al reference pointed out by the Examiner, namely column 4, line 31 - 35, supports Applicant’s arguments, not the Examiner’s arguments. The reference makes it clear that these springs 13a - 13i are in continuous compressions to keep the plates separated and cushioned as a prosthetic device. Simply because the spring ends are securely or firmly attached to the respective plates, does not mean that the springs can thereby provide continuous compressive loading on bone graph material disposed between the vertebral elements as specified by Applicant’s claims.

The Examiner then rejects claims 3 - 4 and 12 - 13 under 35 U.S.C. 103(a) as being unpatentable over Sevrain in view of Richelsoph et al. Similarly, rejection of claims 7 and 16 is also made under 35 U.S.C. 103(a) as being unpatentable over Sevrain in view of Serbousek et al. Reconsideration is respectfully requested with regard to these rejections for the same reasons previously given with regard to the rejection of independent claims 1 and 10.

In addition, the Examiner, in response to Applicant's previous arguments, states that regarding the Beer et al. reference that the springs therein are capable of both permitting and limiting features regarding the spacing of the plate assembly and that the spring is capable of continuously urging the screw-receiving elements in causing compression to material between the plates. However, it is respectfully submitted that if the Beer et al. prosthesis is used in the manner taught by Beer et al., it is impossible for the device to continuously urge the screw-receiving elements together and to cause compression to material between the plates. There are no such teachings, capabilities, or even suggestions in this reference upon which the Examiner can base such an opinion. Accordingly, reconsideration is respectfully requested.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Floyd B. Carothers", written in a cursive style.

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